

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANIEL O'NEILL,

Plaintiff,

v.

No. CIV 11-0858 JB/GBW

FORMER DICTATOR AND
WARDEN LAWRENCE JARAMILLO, ET AL.,

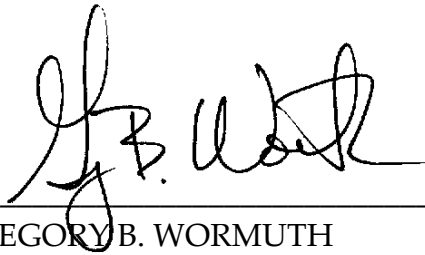
Defendant.

ORDER

This matter is before the court on Plaintiff's Declaration For Entry of Default (Doc. 10) and Motion For Default Judgment against Defendant Jaramillo (Doc. 11), both filed on December 1, 2011. *See* Fed. R. Civ. P. 55. Plaintiff refers to a state court habeas corpus proceeding filed in 2008 and alleges that Plaintiff, who is the Respondent in the state court proceeding, never answered his habeas petition. This Court has no authority enter an order in a state court matter. Furthermore, it appears from the record that Defendant has not been served in this action. The Court may not properly enter default judgment against a defendant unless service has been effected, waived, or accepted. *See, e.g., Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 941 (10th Cir. 1987); *Texas Western Financial Corp. v. Edwards*, 797 F.2d 902, 905 (10th Cir. 1986). "[A]n entry of default against [a defendant],

before it had any obligation to file an answer, would have been incorrect as a matter of law.” *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003). The declaration and motion will be denied.

IT IS THEREFORE ORDERED that the Clerk take no action on Plaintiff’s Declaration For Entry of Default (Doc. 10), and Plaintiff’s Motion For Default Judgment against Defendant Jaramillo (Doc. 11) is DENIED.

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE